

REMARKS/ARGUMENTS

This application has been reconsidered carefully in light of the Office Action dated as mailed on 23 March 2006. A careful reconsideration of the application by 5 the Examiner in light of the foregoing amendments and the following remarks is respectfully requested.

This response is timely filed as it is filed within the three (3) month shortened statutory period for response to the outstanding Office Action.

No additional claim fee is believed due as a result of this Amendment 10 because neither the total number of pending claims nor the number of pending independent claims is believed to exceed the total number and the number of independent claims, respectively, for which fees have previously been paid. If, however, it is determined that such a fee is properly due as a result of this communication, the Commissioner is hereby authorized to charge payment of such fees or credit any overpayment, associated with this 15 communication, to Deposit Account 19-3550.

Amendment to the Claims

By the above, claim 30 has been cancelled without prejudice.

Claims 1-29, 31-49, 51-58, 60 and 61 remain in the application.

Claims Rejections - Double Patenting

20 1. Claim 30 was rejected under U.S.C. §101 as claiming the same invention as that of claim 39 of prior U.S. Patent 6,667,424.

This rejection is moot in view of the above cancellation of claim 30.

25 2. Claims 12 and 13 were rejected under the judicially created doctrine of obviousness-type double patenting over claim 35 of U.S. Patent 6,667,424.

30 3. Claims 29, 40, 60 and 61 were rejected under the judicially created doctrine of obviousness-type double patenting over claims 18, 20 and 34 of U.S. Patent 6,667,424.

4. Claims 41, 43-49 and 51-58 were rejected under the judicially created doctrine of obviousness-type double patenting over claims 39-46 and 48-56 of U.S. Patent 6,667,424.

35 5. Claim 42 was rejected under the judicially created doctrine of obviousness-type double patenting over claim 18 of U.S. Patent 6,667,424 in view of U.S. Patent 5,597,873.

Without acquiescing to the merits of such rejections, submitted herewith is a Terminal Disclaimer believed appropriate and sufficient to overcome these obviousness-

type double patenting rejections. Moreover, as such obviousness-type double patenting rejections were the only stated basis of rejection for claims 40-49, 51-58, 60 and 61, these claims are believed to be in condition for allowance and notification to that effect is solicited.

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Claim Rejections - 35 U.S.C. §102

6. Claims 1, 2, 6, 14, 16-19, 21, 24-28, 31-35, 37 and 39 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent 6,156,020 to Roe et al. (hereinafter "Roe '020").

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These rejections are respectfully traversed.

Claims 1 and 21 are independent claims, with claims 2, 6, 14 and 16-19, directly or indirectly, dependent on claim 1 and claims 24-28, 31-35, 37 and 39 dependent on claim 21.

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With respect to claim 1, the Office Action states that Roe '020 discloses an absorbent article 20, shown in figure 5, comprising a pouch 152 containing nits 172. The Action further states that the nits 172 are disclosed as being particles of cellulosic batts and that the pouch 152 further comprises a nit conditioner.

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With respect to claim 21, the Action states that Roe '020 discloses an absorbent article 20, as shown in figure 5, having a longitudinal axis 100, a transverse axis 110, two longitudinal sides 50 and a target zone 120. The Action further states that the article 20 comprises a liquid impervious backsheet 26 and a liquid pervious topsheet 24, as shown in figures 6 and 6a; a pouch 152 containing "free-flowing particles" 172; the pouch 152 is laterally surrounded by an outer shaping member 210; and a wicking barrier separates at least a portion of the pouch 152 from the outer shaping member 210.

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Claims 1 and 21 are each directed to specified absorbent articles. More particularly, claim 1 requires that the claimed absorbent article include a pouch filled at least in part with free-flowing cellulosic nits. Claim 21 requires that the claimed absorbent article include a conformable intake member comprising a pouch containing free-flowing particles.

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These rejections were discussed in great detail in the Remarks section of the Amendment Response previously submitted on 22 December 2005 and which remarks are hereby expressly herein incorporated.

For example, independent claim 1 specifically requires an absorbent article having a pouch filled at least in part with cellulosic nits. Such an absorbent article is not

shown or suggested by Roe '020. In contrast to the inclusion of "cellulosic nits," Roe '020 specifically discloses that:

The individual particles 172 may be made from any material suitable for use in absorbent articles, including the materials described above with regard to the absorbent core 28 or the storage element 152. The materials used in the particles 172 may be absorbent, nonabsorbent, microporous, macroporous, resilient, nonresilient, etc. or may have any other desirable characteristic. Examples of macroporous absorbent materials suitable for use in the particles 172 include highloft nonwovens, open cell foams, bundles of fibers, sponges and the like. Other absorbent materials include cellulosic batts, capillary channel fibers, osmotic storage materials such as superabsorbent polymers, etc. Nonabsorbent particles 172 may comprise plastic, metal, ceramic, glass, closed cell foams, column packing materials, synthetic fibers, gels, encapsulated gas, liquids and the like. Further, any or all of the particles 172 may include odor absorbents, lotions, skin care formulations, antimicrobials, pH buffers, enzyme inhibitors, and the like. (Column 19, lines 27-45.)

Thus, Roe '020 specifically discloses that the individual particles 172 may be made from any material suitable for use in absorbent articles (Roe '020, column 19, lines 27-30) and that the materials used in the particles 172 may be absorbent, nonabsorbent, microporous, macroporous, resilient, nonresilient, etc. or may have any other desirable characteristic (Roe '020, column 19, lines 30-34).

Further, while Roe '020 mentions that other absorbent materials including "cellulosic batts" can be used, independent claim 1 specifically requires "cellulosic nits" not "cellulosic batts." Those skilled in the art generally know and appreciate that "cellulosic batts" are generally loose, low density mats of fibers. While the Action contends that the term "nits" are not clearly defined in the instant specification, the Examiner's attention is directed to the subject application at page 7, lines 30-31, where the term "nit" is very clearly and expressly defined as "a generally particulate material comprising entangled fibers."

The outstanding Action asserts that "bundle of fibers" disclosed by Roe fulfill the claimed limitation of 'nits' "since a bundle of fibers comprises generally particulate matter comprising entangled fibers." Such an unsupported assertion and any rejection based thereon are respectfully traversed.

The Action appears to have somehow equated a “bundle of fibers”, as disclosed in Roe, with “entangled fibers”, as set forth in the application. However, no support, expressed or implied, has been shown that the Roe “bundle of fibers” comprise entangled fibers. In fact, the term “bundle” such as in the expression “fiber bundle” 5 oftentimes, if not exclusively, is used to refer to generally orderly parallel-running fibers, the antithesis of “entangled fibers.” Thus, the claim requirement of nits, i.e., “a generally particulate material comprising entangled fibers”, is NOT satisfied by the Roe “bundle of fibers” and the withdrawal of such basis of rejection is requested. Absent the withdrawal 10 of such basis of rejection, the Examiner is hereby expressly requested to specifically identify the prior art support for the contention made in the Action that “a bundle of fibers comprises generally particulate matter comprising entangled fibers.”

In addition, as previously submitted, Roe '020 simply states that “the particles 172 may be unjoined and free to move within the structure 170.” (See Roe '020, column 19, lines 16-17). In contrast to such “unjoined and free to move” particles, the 15 inventions of claims 1 and 21 require that the cellulosic nit and particles be “free-flowing”. In this regards it is noted that the application, at page 6, line 11 through page 7, line 4, specifically defines and describes what is meant in the pending application by the term “free flowing.” The application hereat specifically states:

As used herein, the term “free flowing” refers to the ability 20 of particulates to readily flow in response to shear forces typically encountered in the use of a sanitary napkin worn against a human body - forces similar to those obtained by gently rubbing fingers together while the fingers are immersed in the particles of interest. Dry, loose, granular materials such as hardwood nits and polymethylurea 25 (PMU) particles (hereafter described) are generally free-flowing under such conditions in contrast to materials such as clay which can deform but generally does not flow freely. [See page 6, lines 11-17, emphasis in the original.]

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Thus, the application makes a clear distinction between the ability to flow freely and the ability to merely move. The freedom “to move” allegedly disclosed in Roe '020 does NOT correspond or correlate to the “free-flowing” ability or characteristic required by claim 1 and 21.

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While the Action states that “Roe discloses in column 19, lines 27-45, individual particles that fulfill the description of free-flowing particles since they are loose,

granular materials," on review of the cited passage at column 19, lines 27-45 no reference was found to "loose, granular materials." Thus, it is respectfully maintained that the freedom "to move" allegedly disclosed in Roe '020 does NOT correspond or correlate to the "free-flowing" ability or characteristic required by claim 1 and 21.

5 In addition, claim 1 requires the nits comprise "papermaking fibers and a nit conditioner". Such nits are nowhere shown or suggested by Roe '020.

While Roe '020 at column 19, lines 43-45, discloses that "any or all of the particles 172 may include odor absorbents, lotions, skin care formulations, antimicrobials, pH buffers, enzyme inhibitors, and the like," the disclosure of the possible inclusion of such additives in no way corresponds to the claim 1 requirement for a nit conditioner "effective to improve free flow of the nits as compared to the nits without the nit conditioner." As described in the application, suitable nit conditioners include debonders, lubricants, wax, silicone compounds or other hydrophobic material to modify fiber-fiber interactions during dispersing and/or to modify particle-particle interactions once incorporated into an absorbent article. (See page 28, lines 1-6, for example.)

It is respectfully submitted that the use of a lotion composition such as for the purpose of skin care, as in Roe '020, does not show or suggest the use of a nit conditioner or, more specifically, a lubricant, as in the claimed invention. The outstanding Action asserts that "a lotion acts as a lubricant" (see page 2 of the outstanding Action), but does not provide or identify any prior art support for such contention. Thus, the claim requirement of the nits comprising a nit conditioner is NOT satisfied by the Roe '020 disclosure of the possible inclusion of "lotions" and the withdrawal of such basis of rejection is requested. Absent the withdrawal of such basis of rejection, the Examiner is hereby expressly requested to specifically identify the prior art support for the contention made in the Action that the "lotions" referred to in Roe' 020 "acts as a lubricant."

Independent claim 21 additionally requires that the claimed absorbent article include "a wicking barrier between at least a portion of the pouch and the outer shaping member." It is respectfully submitted that an absorbent article, such as claimed and including such a wicking barrier is neither shown nor suggested by Roe '020.

30 The Action (on page 5) cites Roe '020, column 19, lines 56-59, for support that Roe '020 discloses a wicking barrier separating at least a portion of "the pouch 152 from the outer shaping member 210." The Action (in the paragraph bridging pages 2 and

3) cites Roe '020, column 19, lines 56-59, as disclosing "a scrim or web separating the nits from other portions of the article.

As previously submitted, however, Roe '020, column 19, lines 56-59, simply states:

5 Different layers of particles may be directly adjacent each other or may be separated by one or more materials, such as netting, scrim, nonwoven or woven webs, film, foam, adhesive, and the like.

10 Thus, the passage of Roe '020 cited in the Action simply states that such a "scrim or web" can be used to separate "different layers of particles." Separation of different layers of the particles 172 does NOT correspond to "a wicking barrier between at least a portion of the pouch and the outer shaping member", as required by the claimed invention.

15 Also as previously submitted, the external support 210 of Roe '020 is disclosed as being underneath and substantially co-extensive with the particles 172, as shown by FIG. 16, and is thus a smaller element within the storage element 152, not an "outer shaping member" as required by pending claim 21. In the claimed invention, the outer shaping member is not located within the pouch. Clearly, the external support 210 of Roe '020 does not constitute an outer shaping member, as in the claimed invention. Such 20 previous argument does not appear to have been addressed in the outstanding Action.

In view of the above, independent claim 1 and the claims dependent thereon (including claims 2, 6, 14 and 16-19) as well as independent claim 21 and the claims dependent thereon (including claims 2, 6, 14 and 16-19) are believed to be patentable over Roe '020 and notification to that effect is solicited.

25 Further, at least certain of these dependent claims include additional limitations which are believed to further patentably distinguish over Roe '020.

30 For example, claim 2 is dependent on claim 1 and further requires that the nit conditioner comprises a chemical additive selected from a debonder, a dispersant, a lubricant, and a surfactant. As identified above, a "lotion" does not correspond to a lubricant and the inclusion or use of a lotion in Roe '020 does not anticipate the claimed inclusion of a nit conditioner.

Claim 14 and 16-18 are each dependent on claim 1 and further require:

1. the nits have an angle of repose of about 70° or less (claim 14);
2. at least 90% by weight of the nits have a particle size range from 100 microns to 800 microns as determined by sieve analysis (claim 16);
5 3. the nits have been prepared in a predetermined manner and wherein the nits have a substantially higher absorbent capacity than nits prepared in a manner identical to the predetermined manner but without the addition of the chemical additive, and wherein the chemical additive is substantially nonabsorbent (claim 17); and
10 4. the nits are substantially free of particles greater than 850 microns (claim 18).

Absorbent articles containing nits with such properties or characteristics are not believed to be shown or suggested by Roe '020. For example, as described in the application, such as at page 6, lines 17-19, free-flowing particles as used in the application generally have an angle of repose of less than about 70°. It is respectfully submitted that
15 the inclusion and use of nits have an angle of repose of about 70° or less is not shown or suggested by Roe '020.

Further the Office Action contention that nits inherently have an angle of repose in the range of 70 degrees or less is not supported by the prior art. The specification expressly provides that:

20 As used herein, "angle of repose" refers to the angle relative to the horizontal plane formed by the sides of a pile of free flowing particles prepared under controlled circumstances. See page 18, lines 29-31.

25 Clearly, the assertion in the Action that "nits inherently have an angle of repose, which would fall into the range of 70 degrees or less, as the range enables angles between 70 and -290 degrees" is nonsensical in view of the stated definition of the term "angle of repose" as being relative to the horizontal plane formed by the sides of a pile of free flowing particles. It is further noted that subject FIG. 9 shows a simple apparatus for
30 measuring the angle of repose of free-flowing particles and subject FIG. 10 shows how the angle of repose is determined in a pile of free-flowing particles. Clearly, there is no support for an angle of repose, such as "-290 degrees." Absent the withdrawal of such basis of rejection, the Examiner is hereby expressly requested to specifically identify the

prior art support for the contention that the particles of Roe '020 inherently have an angle of repose of about 70° or less.

The Action again cites Roe '020, column 19, line 1 as allegedly supporting the stated rejection of claims 16 and 18. Roe '020, column 18, line 64 through column 19, line 2, however, states:

The macro particles 172 preferably have a nominal size, preferably between about 1.0 mm and about 25.4 mm, and more preferably between about 2 mm and about 16 mm. However, particles as small as 0.5 mm and smaller, and particles larger than about 25.4 mm are contemplated.

Based on the above passage of Roe '020, the Action somehow has apparently arrived at the conclusions that "100 % of the nits 172 have a particle size of 0.5 mm" and "the pouch is free of particles with a size greater than 0.85 mm."

For a reference to anticipate a claim, the reference must teach each and every element or limitation of the claim. Roe '020 nowhere teaches that "100 % of the nits 172 have a particle size of 0.5 mm" or that "the pouch is free of particles with a size greater than 0.85 mm." In fact, the cited Roe '020 disclosure that the "macro particles 172 preferably have a nominal size, preferably between about 1.0 mm and about 25.4 mm, and more preferably between about 2 mm and about 16 mm", teaches against the presently claimed invention.

As previously submitted claim 33 is dependent on claim 21 and further requires that the free-flowing particles further comprise an enzyme. While the Action repeats the citation to Roe '020, column 19, lines 43-45 for supporting the contention that the pouch 152 of Roe '020 comprises an enzyme, it is again noted that the cited passage refers to "enzyme inhibitors", not enzymes. The Action fails to identify any showing or suggestion in the prior art of such inclusion of an enzyme corresponding to that in the claimed invention. In this regard it further noted that the "Response to Arguments" section of the outstanding Office Action does not even address Applicants' previously made arguments relative to the patentability of the claimed inclusion of an enzyme, thus hindering the effective further prosecution of the application should the application be subject to a subsequent final action.

In view of the above, these dependent claims are believed to be clearly patentable over Roe '020 and notification to that effect is solicited.

7. Claims 1-3 and 5 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent 5,649,915 to Chauvette et al. (hereinafter "Chauvette").

The Action asserts that "Chauvette discloses a pouch 20, as shown in figure 4, containing cellulosic nits 12 comprising cellulose fibers, and a nit conditioner comprising a hydrophilic debonder, as disclosed in column 6, lines 54-67."

These rejections are respectfully traversed.

Claim 1 requires "a pouch filled at least in part with free-flowing cellulosic nits." Moreover, the application at page 6, lines 11-14, specifically and expressly defines "free flowing" as referring to "the ability of particulates to readily flow in response to shear forces typically encountered in the use of a sanitary napkin worn against a human body--forces similar to those obtained by gently rubbing fingers together while the fingers are immersed in the particles of interest." (Emphasis added.)

The fibers 12 of Chauvette are not "free-flowing cellulosic nits." In fact, Chauvette specifically discloses that the fibers 12 form a fibrous network 18 containing cross-linked cellulosic fibers 16. [See FIG. 3 and column 6, lines 5-7] Clearly, the fibers 12 shown in the figures of Chauvette are NOT "free-flowing cellulosic nits", as required by claim 1 and the claims dependent thereon, including claims 2, 3 and 5.

The Action asserts that in Chauvette, "the cellulosic fibers 12 are able to move in relation to each other." Even if solely for the sake of argument such assertion is taken as true, claim 1 requires "a pouch filled at least in part with free-flowing cellulosic nits", not simply fibers "able to move in relation to each other."

In view thereof, the withdrawal of the subject rejection of claims 1-3 and 5 is requested and notification to that effect is solicited.

25 **Claim Rejections - 35 U.S.C. §103**

8. Claims 3, 4, 7-9, 11 and 36 were rejected under 35 U.S.C. §103(a) as being unpatentable over Roe '020 as applied to Claim 1 above and further in view of U.S. Patent 5,643,588 to Roe et al. (hereinafter "Roe '588").

The Action contends that Roe '020 discloses all aspects of the claimed invention but remains silent as to the type of lotion that may be used as the nit conditioner and cites Roe '588 as disclosing the use of a lotion in an absorbent article. The Action proceeds to assert that:

It would therefore be obvious to one of ordinary skill in the art at the time of the invention to use mineral oil or mineral wax, as taught by Roe '588 as the lotion disclosed by Roe '020.

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These rejections are respectfully traversed.

Roe '588 discloses a lotion composition for a topsheet in an absorbent article. (See Roe '588, abstract and column 9, line 39 - column 10, line 47, for example.) The lotioned topsheet of Roe '588 is not believed to be particularly pertinent to the inclusion or use of a nit conditioner on or with the pouch-contained nits of the claimed absorbent articles. Further, claims 3, 4, 7-9, 11 are dependent on claim 1 and claim 36 is dependent on claim 21. As independent claims 1 and 21 are believed to be patentable over Roe '020 for the reasons advanced above and as the above-identified deficiencies of the rejections of claims 1 and 21 on the basis of Roe '020 are not overcome by the further combination of Roe '588 herewith, Claims 3, 4, 7-9, 11 and 36 are believed to be further patentable over this proposed combination and notification to that effect is solicited.

9. Claim 10 was rejected under 35 U.S.C. §103(a) as being unpatentable over Roe '020 as applied to claim 1 above.

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Claim 10 is dependent on claim 1. As independent claim 1 is believed to be patentable over Roe '020 for the reasons advanced above, claim 10 is also believed to be patentable over Roe '020 and notification to that effect is solicited.

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10. Claims 12, 13 and 29 were rejected under 35 U.S.C. §103(a) as being unpatentable over Roe '020 as applied to claims 1 and 21 above, and further in view of Chambers.

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The Action has recognized that Roe '020 does not show or suggest an absorbent article, as claimed, wherein the nits have the required AUL value (claim 12) and/or the claimed Centrifuge Retention Capacity value (claims 13 and 29). The Action cites Roe '020 column 19, line 39 for support that the particles 172 in the Roe '020 absorbent article can be "superabsorbent material." The Action proceeds cite Chambers, column 4, lines 43-55, for an alleged disclosure of a superabsorbent material satisfying the claimed limitations regarding AUL value and Centrifuge Retention Capacity value.

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Such rejections are respectfully traversed.

Claims 12 and 13 are dependent on claim 1 and claim 29 is dependent on claim 21, respectively. As independent claims 1 and 21 are believed to be patentable over Roe '020 for the reasons advanced above and as the above-identified deficiencies of the rejections of claims 1 and 21 on the basis of Roe '020 are not overcome by the further combination of Chambers therewith, claims 12, 13 and 29 are believed to be further patentable over this proposed combination and notification to that effect is solicited.

Furthermore, it is noted that claims 12 and 13 require the "nits" to satisfy the claimed limitations regarding AUL and Centrifuge Retention Capacity values, respectively. These "nits", as set forth in underlying independent claim 1 are "free-flowing cellulosic nits, the nits comprising papermaking fibers and a nit conditioner effective to improve free flow of the nits as compared to the nits without the nit conditioner."

Such "free-flowing cellulosic nits" are in sharp contrast to the "superabsorbent polymer" identified and described in Chambers at column 4, lines 43-55. As previously submitted and not refuted in the outstanding Action, "superabsorbent polymer" as disclosed in Chambers does not correspond to the "free-flowing cellulosic nits" of the claimed invention.

In view of the above, the subject rejections of claims 12, 13 and 29 are believed to be improper or otherwise to have been overcome and notification to that effect is solicited.

11. Claims 15 and 23 were rejected under 35 U.S.C. §103(a) as being unpatentable over Roe '020 as applied to claims 1 and 21 above, and further in view of U.S. Patent 5,009,650 to Bernardin (hereinafter "Bernardin").

Claims 15 and 23 are dependent on claims 1 and 21, respectively. As independent claims 1 and 21 are believed to be patentable over Roe '020 for the reasons advanced above and as the above-identified deficiencies of the rejection of claims 1 and 21 on the basis of Roe '020 are not overcome by the further combination of Bernardin herewith, claims 15 and 23 are believed to be further patentable over this proposed combination and notification to that effect is solicited.

12. Claims 20 and 22 were rejected under 35 U.S.C. §103(a) as being unpatentable over Roe '020 as applied to claims 1 and 21 above, and further in view of U.S. Patent 5,762,641 to Bewick-Sonntag et al. (hereinafter "Bewick-Sonntag").

Claims 20 and 22 are dependent on claims 1 and 21, respectively. As independent claims 1 and 21 are believed to be patentable over Roe '020 for the reasons advanced above and as the above-identified deficiencies of the rejection of claims 1 and 21 on the basis of Roe '020 are not overcome by the further combination of Bewick-Sonntag
5 herewith, claims 20 and 22 are believed to be further patentable over this proposed combination and notification to that effect is solicited.

13. Claim 38 was rejected under 35 U.S.C. §103(a) as being unpatentable over Roe '020 as applied to claim 21 above.

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Claim 38 is dependent on claim 21. As independent claim 21 is believed to be patentable over Roe '020 for the reasons advanced above, claim 38 is also believed to be patentable over Roe '020 and notification to that effect is solicited

Conclusion

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In view of the above, all pending claims are believed to be in condition for allowance and notification to that effect is solicited. However, should the Examiner detect any remaining issue or have any question, the Examiner is kindly requested to contact the undersigned, preferably by telephone, in an effort to expedite examination of the application.

Respectfully submitted,



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